

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8580 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF B J TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

RULE SERVED for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 06/08/1999

ORAL JUDGEMENT

Leave to correct the name of respondent No.2 in the cause title.

The only question which has come to the surface at the time of final hearing in this petition under Article 226 of the Constitution of India is, as to whether the period of service from 20.1.49 to 30th June 1961 was not considered for the purpose of fixation of pension to the petitioner or not ? There is no dispute about the fact

that the period of service beyond 30th June, 1961 has been considered for the purpose of pension and pension has been fixed. Therefore, the controversy has shrunk down to a narrow dimension whether the aforesaid period is permissible to be added for the purpose of consideration of fixation of the pension of the petitioner.

The respondent authorities have not filed reply despite the fact that more than 10 years has elapsed after the filing of the petition. Despite service, nobody has appeared. However, Mrs. Talati, Assistant Government Pleader, was requested by the Court to assist the Court and for assisting the Court to seek assistance of the officers concerned with the only aim to see that the controversy which is more than a decade old, if not more, could be put an end. After having considered the certified xerox copy of the service book of the petitioner, there is hardly any scope for doubt that the petitioner worked in the school as a teacher from 20th January 1949 to 30th June, 1961. The version of the petitioner stated on oath has been reinforced by the certified xerox copy of the service book and in absence of any other opposition or counter, the Court is left with no alternative but accept it as a secondary evidence and to rely on it. Obviously, therefore, according to the settled proposition of law, the said period from 20th January, 1949 to 30th June, 1961, during which he actually worked as a teacher as per the service record is required to be added in the length of service period for the purpose of determining and fixing the amount of pension, which is admittedly not done.

In the result, the petition is, partly, allowed. Respondent No.2, Director of Pension and Provident Fund, Gujarat State, is directed to consider the period from 20th January, 1949 to 30th June, 1961 as continuous service for the purpose of refixation of pension and, accordingly, refix the pension and pass revise order in terms of the relevant rules and also pay the arrears within a period of six weeks from the date of receipt of writ of this Court. The amount will be paid to the widow of the original petitioner, Sarla Balchandra Trivedi. Rule is made absolute to the aforesaid extent.

Before parting, it may be mentioned that the Officers who remained present upon instruction of the learned AGP Mrs. Talati, who helped the Court upon request to, finally, adjudicate upon the old controversy pertaining to family pension in the International Year of Welfare of elder people deserve high degree of encomium.

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(vjn)